

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SOUTHWEST AIRLINES CO.,

Plaintiff,

v.

KIWI.COM, INC. and KIWI.COM
S.R.O.,

Defendants.

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Civil Action No. 3:21-cv-00098-E

**PLAINTIFF SOUTHWEST AIRLINES CO.’S OPPOSED MOTION FOR LEAVE TO
SUPPLEMENT ITS APPENDIX IN SUPPORT OF ITS MOTION FOR PRELIMINARY
INJUNCTION AND BRIEF IN SUPPORT**

Pursuant to Local Rule 56.7, Plaintiff Southwest Airlines Co. (“Southwest”) respectfully requests leave to supplement its Appendix in Support of its Motion for Preliminary Injunction (“Appendix”) [D.I. 18, 19] as follows:

I. ARGUMENT AND AUTHORITIES

1. On February 24, 2021, Southwest filed its Motion for Preliminary Injunction (“Motion”) [D.I. 18], as well as its Appendix [D.I. 19]. The Motion is fully briefed. The Court has not scheduled a hearing for the Motion.

2. On April 15, 2021, Southwest filed an unopposed request for leave to supplement its Appendix, which the court granted [D.I. 32, 36, 41].

3. Southwest now moves for leave to provide evidence regarding additional events that have occurred since the filing of Southwest’s Motion and appendix, and which further underscore irreparable harm caused by Kiwi’s continuing conduct.

4. As discussed in the Motion, Kiwi is scraping and hacking Southwest's computers, and republishing Southwest fares in violation of the Terms and Conditions of Southwest.com. Recently, Southwest has discovered that Kiwi also is allowing one or more third parties, including other online travel agencies ("OTAs"), to obtain Southwest flight and/or fare data from Kiwi.com, and those OTA(s) are then republishing Southwest information obtained from Kiwi's website. As an example, upon information and belief, Kiwi has a commercial relationship or partnership with another OTA, Skiplagged.com, and Skiplagged.com is promoting the sale of Southwest flights through Kiwi.com.

5. After Southwest requested that Skiplagged.com cease and desist its unauthorized activities, on July 1, 2021, Skiplagged.com filed a declaratory judgment action against Southwest in the Southern District of New York. In that suit, Skiplagged claims it is not bound by the Terms and Conditions of Southwest.com because it claims it is obtaining Southwest fare information from other sources (i.e., Kiwi.com), not Southwest.com. This expansion of unauthorized sales activity further erodes Southwest's right to control access to and use of its proprietary fare information, and interferes with Southwest's legitimate business prospects with its passengers. *See, e.g.*, Declaration of Mark Hursh, D.I. 19 at Appx 1-29.

6. The attached declaration of Michael C. Wilson is relevant to and supports Southwest's requested injunctive relief. Unless and until the Court enjoins Kiwi from its unlawful conduct, Southwest is unable to prevent Kiwi from providing to Skiplagged (or other third parties) the data Kiwi is scraping from Southwest without authorization.

II. CONCLUSION

For the foregoing reasons, Southwest requests that the court grant leave to file a supplemental appendix in support of its Motion for Preliminary Injunction.

Date: July 13, 2021

Respectfully submitted,

By: /s/ Michael C. Wilson

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF CONFERENCE

I hereby certify that the undersigned counsel for Plaintiff conferred with Asa Garber, counsel for Defendants, regarding this Motion in compliance with Local Rule 7.1(b)(2) and (3). July 12, 2021. Mr. Garber stated that he would not be able to timely confirm or deny his clients' opposition to the relief requested. Southwest presumes the relief requested in this motion is opposed.

/s/ Julie M. Christensen

Julie M. Christensen

CERTIFICATE OF SERVICE

I hereby certify that on a true and correct copy of the foregoing document has been served on all counsel of record via the Court's electronic filing system, pursuant to the Federal Rules of Civil Procedure, on July 13, 2021.

/s/ Michael C. Wilson

Michael C. Wilson